

## **SCHEME OF ARRANGEMENT (SOA) IN ABANDONED HOUSING PROJECTS: A CASE STUDY OF MALAYSIA**

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*Abandoned housing projects is a formidable problem in Malaysia's housing industry. Although the Malaysian government has enacted law and formulated policies to govern the housing industry since it achieved Independence in 1957, abandoned housing projects remains a recurrent problem until today. The real victims are the purchasers themselves. When an insolvent housing developer company is subject to Scheme of Arrangement (SOA), the affair and business of the company are taken over by the appointed SOA Manager. The SOA Manager may rehabilitate the abandoned projects left by the insolvent housing developer companies, if the projects are viable for rehabilitation with the majority approval of the creditors and where there are adequate funds to finance the rehabilitation. Otherwise, if the project is not viable, particularly because there are insufficient funds to run the rehabilitation or the problems of the abandoned housing projects are too complicated, the projects may be stalled forever without any prospects for rehabilitation, to the detriment of the purchasers. This article discusses the law and practice in the rehabilitation of abandoned housing projects in Malaysia of housing developer companies under SOA. At the end of this paper, the author proposes certain suggestions in facing the problems of abandoned housing projects of the housing developer companies under SOA and its rehabilitation in Malaysia.*

**Key words:** Companies' Scheme of Arrangement (SOA) Laws; Abandoned Housing Projects; Rehabilitation; Malaysia.

### **INTRODUCTION**

If a company is unable to pay its debts, it may be subject to scheme of arrangement (SOA) on the application of the creditors or members or the liquidator or the company itself. The purpose of SOA is for the SOA manager to take over the affairs of the company in order to settle the debts of the creditors and once all the debts are fully paid, the control of the company will be handed over back to the previous management. The SOA manager is armed with certain powers and duties in the SOA administration. The benefit of obtaining SOA is to give some time to the SOA manager to run the company in order to settle the debts of the company. Moratorium power will be given to the company under SOA against any actions and proceedings by the creditors during the

course of the SOA administration. This moratorium power is to allow the SOA manager to exercise the SOA effectively without any interference by the creditors.

In respect of the insolvent housing developer company under SOA, similar duties are carried out by the appointed SOA manager, *viz* to take over the affairs of the company, to settle off all the debts of the creditors, to carry on any project and business left by the company if this is expedient in accordance with the law and the wish of the creditors. Once all these have been dispensed with, the affairs and management of the company will be handed back to the previous management.

## **PROBLEM STATEMENT**

It is an undisputed fact that abandoned housing projects are a negative phenomena plaguing the housing industry in Malaysia. The issue of abandoned housing projects began with the adoption of a housing democracy by the Malaysian government in the 1960s. Prior to the 1960s, public housing was provided by the government itself. However, due to insufficiency of government funds and the upsurges in demand for housing ownership and needs, the government opened the door for private housing developers to participate in providing public housing to the citizens. This policy was supported by aggressive government assistance, incentives and legal means to ensure its success. Despite such efforts, the occurrences of abandoned housing projects have marred the role of private housing developers in respect of national development and safeguarding the interests of its citizen purchasers. As a result, many purchasers have become victims of abandoned housing projects.

There are various reasons causing abandoned housing projects and the consequential problems they have caused are grave. One of the reasons is that there are insufficient legal provisions and protection to avoid and prevent abandonment and to protect the interests of purchasers. In the event that rehabilitation can be carried out, the ensuing problems caused--pecuniary and non-pecuniary losses, are still left hanging and unsettled for most of the purchasers and stakeholders, without any sufficient remedies and measures to address them.

Some quarters say that the current housing policy and industry in Malaysia is still healthy, notwithstanding the plight of purchasers of abandoned housing projects, poor workmanship of the houses and other housing problems. 'The problem of abandoned housing projects only represents 1-3% of the total housing projects'. 'The remaining 97%-99% of housing projects succeeds'. 'Thus, the current system of housing delivery and policies should be continued regardless of the plaguing occurrences of abandoned housing projects' and their negative consequences befalling the purchasers' (Dato' Abu Bakar Bin Hassan & Dato' Zainudin bin Tala, personal communication, August 13, 2010).

Unfortunately, these are some of the statements made by persons in authority in Malaysia's housing industry. Nonetheless, despite these statements, there are still inadequate measures taken by the government to alleviate the problems of abandoned housing projects, not even the current newly established Division of Rehabilitation of

Abandoned Projects under the Department of National Housing, Ministry of Housing and Local Government ('MHLG'), can. The measures taken are still 'too little too late' in the face of the catastrophe caused by abandoned housing projects'. The fallen preys are the aggrieved purchasers themselves. The law governing the housing industry in Malaysia – the Housing Development (Control and Licensing) Act 1966 and its regulations (Act 118) is evidently unable to fully address the problems of abandoned housing projects. The court also seems indecisive in protecting the interests of the aggrieved purchasers in abandoned housing projects. This is partly due to 'too many conflicting considerations and equities' that the court needs to deal with in cases involving abandoned housing projects. Thus in certain circumstances, the rights and interests of the purchasers may not be fully appreciated and taken into consideration by the court. The problem becomes more severe where housing developer company is subject to the insolvency administration. In the insolvency administration, the insolvent ailing company becomes bankrupt and all the assets and moneys will be used to settle off the debts of the creditors and there may not be any sufficient monetary balance which can be used to rehabilitate the abandoned housing projects and to compensate the aggrieved purchasers (Nuarrual Hilal Md. Dahlan. (2009). Abandoned housing projects in Peninsular Malaysia: Legal and regulatory framework (Doctoral dissertaion, International Islamic University Malaysia, 2009).

Among the reasons leading to the abandonment of housing projects, in Malaysia, are:

- 1) Financial problems faced by the developers. The cause of this problem is owing to the problems with the developers' financial and construction management (severe liquidity problems and high gearing) to meet the construction costs and to repay creditors;
- 2) Loose approval of the applications for housing developer licences by MHLG. MHLG fails to obtain the requisite advice and opinions from economists, legal experts, property experts and other experts in approving the applications;
- 3) Challenges and problems of dealing with and clearing the project site of squatters;
- 4) Ongoing conflicts, feuds and squabbles ensuing between and among the developers, land proprietors, purchasers, contractors, consultants and financiers causing further difficulty to coordinate and streamline the development and construction activities; and,
- 5) Insufficient coordination between the land administration authority, planning authority, building authority, housing authority and other technical agencies in respect of the approval for the alienation of land, land uses, subdivision of lands, planning permission, building/infrastructure plans, housing developers' licences and issuance of the Certificate of Fitness for Occupation (CF) and Certificate of Completion and Compliance (CCC), as the case may be.

The grievances and problems faced by the purchasers, if a housing development project is abandoned, are:

- 1) They are unable to get vacant possession of the units on time as promised by the vendor developers.
- 2) The construction of the houses is terminated or partly completed resulting in the houses being unsuitable for occupation for a long duration of time, unless the units can expeditiously be revived.
- 3) In the course of the abandonment of the project, purchasers still have to bear all and keep up the monthly installments of the housing loans repayable to their respective end-financiers, failing which, the purchased lots being the security for the housing loan would be sold off and with the possibility of the borrower purchasers be made bankrupts by their lender bank (See "290 face bankruptcy over abandoned housing projects," 2011).
- 4) Further, as the purported purchased unit has been abandoned and cannot be occupied, purchasers have to rent other premises, thus adding up their monthly expenses.
- 5) Inability of the purchasers to revoke the sale and purchase agreements and claim for the return of all the purchase moneys paid to the developers as the developer may have absconded or may have no monetary provisions at all to meet the claims.
- 6) Many problems and difficulties happen in attempts to rehabilitate abandoned housing units. The problems are because the projects may have too long been overdue without any prospect of revival and to rehabilitate them, needing additional costs and expenditure on part of the purchasers.
- 7) Possible difficulties in reaching consensus and towards getting cooperation from purchasers, defaulting abandoned developers, end-financiers, bridging loan financiers, contractors, consultants, technical agencies, local authority, land administration authority, state authority and planning authority to rehabilitate the projects. This may be due to technical and legal problems faced in the attempt to rehabilitate the projects.
- 8) Insufficient funds to generate the rehabilitation as the outstanding loan funds of the purchasers are not enough, purchasers refuse to part with their own money, no financial assistance from any agencies and the fact that the rehabilitating parties would incur losses if they were to proceed with the purported rehabilitation.
- 9) Purchasers themselves need to top-up using their own money, as the available funds are insufficient for meeting the rehabilitation costs and they themselves personally have to rehabilitate the projects left abandoned. Thus, they have to face all kinds of music in consequence of the abandonment and initiating efforts for rehabilitation.
- 10) Purchasers would not get any compensation and damages from the defaulting abandoned developers as they (the defaulting abandoned developers) may have no monetary provisions to meet the claims.
- 11) There may be no party agreeable to rehabilitate the abandoned housing projects, causing the project to be stalled for an indefinite period of time or for a long period of time or at the worst, the abandoned project may not altogether be rehabilitated.

- 12) Other pecuniary and non-pecuniary losses subtle or otherwise, suffered by purchasers due to the abandonment and in the course of rehabilitation of the projects pending full completion, such as divorces, family breakdowns, dismissals from employment, nervous shocks, mental breakdowns and losses of future earnings.
- 13) Due to the abandonment and the ensuing complications occurring thereafter, the ordinary machinery and enforcement of the housing, planning, building and development laws becomes dysfunctional at the expense of the purchasers. This also includes the inability of the purchasers to take legal actions against the defaulting developer because the actions might not be beneficial nor feasible (Nuarrual Hilal Md. Dahlan, 2006).

## **RESEARCH QUESTIONS**

There are a few questions that can be posed regarding the rehabilitation of abandoned housing projects whose housing developer companies are subject to the SOA administration. These questions are:

- 1) Whether the rights and interests of such purchasers, in the abandoned housing projects of the insolvent housing developer companies which are subject to SOA administration are fully protected? And,
- 2) If not protected, how could the law be improved and improvised for the benefits and protections of the purchasers' interests?

## **OBJECTIVES OF THE PAPER**

- 1) To study the rights and interests of the purchasers in abandoned housing projects whose housing developer companies are subject to SOA;
- 2) To study the existing SOA legal provisions under the Companies Act 1965 (CA) and the case law insofar as these provisions can deal with the problems of abandoned housing projects and its rehabilitation; and,
- 3) To suggest certain legal provisions to improve the current law governing SOA administration so that the law can sufficiently be able to deal with the problems of abandoned housing projects and its rehabilitation.

## **HYPOTHESES**

The current law governing SOA administration in the CA and in the case law is insufficient to protect the interests of the purchasers in abandoned housing projects.

## **SIGNIFICANT OF RESEARCH**

It is opined that this research will be beneficial to the purchasers in abandoned housing project and the government regulatory bodies in Malaysia on housing industry and insolvency matters by way of highlighting the problems they may face in dealing with insolvent housing developer companies which are subject to SOA administration and the

housing projects are abandoned. Certain proposed recommendations are also provided in this paper for consideration of these stakeholders to adopt for the betterment in the management of abandoned housing projects in Malaysia.

## **LITERATURE REVIEW**

Currently, a housing project in Malaysia can be deemed to have been abandoned when:

- a) The construction activities on site of the housing project have consecutively stopped for six months or more, after the expiry of the Sale and Purchase Agreement (S&P) executed by the developer and the purchaser; or,
- b) The developer has been put under the control of the Official Receiver; or,
- c) The developers admit in writing to the Housing Controller that they are unable to complete their projects; and,
- d) The project is endorsed as an abandoned housing project by the Minister of Housing and Local Government pursuant to section 11(1)(c) of the Housing Development (Control and Licensing) Act 1966 (Act 118)(Official Portal of the Ministry of Housing and Local Government 2011).

## **Scheme of Arrangement ('SOA')**

The interests of the purchasers in abandoned housing projects of the insolvent housing developer companies may also be protected with the provisions of scheme of arrangement ('SOA') pursuant to section 176 of the CA. According to section 176(1) of the CA, the Court may, on application of the insolvent company or creditors or members or liquidator, as the case may be, order a meeting of compromise or arrangement of the creditors or members of the company with the company to settle their debts towards the creditors. This compromise and arrangement must first be supported by three fourth majority of the creditors or members of the insolvent company (section 176(3) CA). It is submitted that the 'compromise and arrangement' may include the plan for rehabilitating the abandoned housing projects and pay damages to purchasers.

## **RESEARCH METHODOLOGY**

The research methodology that had been used by the author in this research paper was the legal research methodology. The legal research that the researcher wished to undertake is a mixture between applied research and academic research. Basically applied research is concerned with action or practical research in order to improve the applicability of the legal rules, whereas academic research is concerned with analyzing and criticizing certain aspects of the law in order to improve the law and the legal theory. This is so because, the objectives of this research paper fit into the definition of applied research and academic research.

In another category, this research too comprises an analytical/critical research and descriptive legal research. The nature of this research paper fits the features of analytical research as this research paper will analyze relevant legal aspects concerning abandoned

housing projects and SOA administration as contained in the CA and the case law. This research paper will also state the rules, principles of the law and decided cases involved in each and every stage of abandoned housing projects. This is a feature of descriptive legal research.

Finally, this legal research paper is a library-type. Library-type research means the research and issues involved and their sources of reference are widely available in libraries, internet and computer software. The purported research activities also included the discovery of the principles, rules and case law in order to explain and resolve the problem statements, objectives and research questions. The sources were that of the traditional legal authorities, revolving principally around the liquidation law, insolvency laws and other branches of law (such as equity) that are relevance to the topic under research. The examples of these sources were: the statutes, case law, practice notes, circulars and directions etc (McConville & Chui 2007).

The SOA administration as enshrined in the CA, case law and common law concerning abandoned housing projects, which become the subjects to this research are those which are applicable in Malaysia.

## **FINDINGS**

The findings of this research paper are as follows:

- 1) The interests of the purchasers in abandoned housing project may be protected with the provisions of scheme of arrangement ('SOA') pursuant to section 176 of the CA. Accordingly, the Court may, on application of the insolvent company or creditors or members or liquidator, as the case may be, order a meeting of compromise or arrangement of the creditors or members of the company with the company to settle their debts towards the creditors. This compromise and arrangement must first be supported by three fourth majority of the creditors or members of the insolvent company; and,
- 2) Nonetheless in the opinion of the author to obtain the approval of the creditors or members may not be that easy, in the SOA. The applicant must prove that the proposed compromise and arrangement would be beneficial specifically to the creditors and the members of the insolvent company. Otherwise, the proposed compromise and arrangement may not be actualized. In the rehabilitation of abandoned housing projects, the paramount consideration is the funds to finance the rehabilitation and the guarantee that all the authorities (such as the lender banks, local authority, planning authority, technical agencies, housing authority and land authority) are agreeable to support the purported rehabilitation and the completion of the rehabilitation itself. If these matters cannot be ascertained or the rights of the creditors and the members would be detrimental as consequence of carrying out the rehabilitation, the creditors and the members may not approve the proposed compromise and arrangement.

## ANALYSES OF THE FINDINGS

It is evident that in the SOA administration to obtain the approval of the creditors or members for the SOA manager to carry out rehabilitation of the abandoned housing project left by the insolvent company may not be easy. In fact, the applicant must prove that the proposed compromise and arrangement would be beneficial specifically to the creditors and the members of the insolvent company. Otherwise, the proposed compromise and arrangement may not be actualized. In the rehabilitation of abandoned housing projects, the paramount consideration is the funds to finance the rehabilitation and the guarantee that all the authorities (such as the lender banks, end-financiers, local authorities, planning authorities, technical agencies and land authorities) are agreeable to support the purported rehabilitation and the completion of the rehabilitation itself. If these matters cannot be ascertained or the rights of the creditors and the members would be detrimental in consequence of carrying out the rehabilitation, the creditors and the members may not approve the proposed compromise and arrangement i.e to rehabilitate the abandoned housing projects or any compromise and arrangement to secure the purchasers' rights and interests.

In *Capital Dynasty Sdn Bhd (in liquidation) v Chiang Bing & Ors* [2009] 8 MLJ 841 (High Court at Kuala Lumpur, presided by Ramly Ali J), the court allowed the application of the liquidator on behalf of the wound up company (petitioner being an abandoned project developer) to have a scheme of arrangement (SOA) be conducted for the benefits of the scheme creditors (consisted of the aggrieved purchasers, unsecured and the secured creditors), pursuant to section 176(1), (3) and (4) of the CA. The SOA was proposed by the liquidator after a proposal was made by a company by name of Blackstone Eight Sdn Bhd ('Blackstone') to purchase the completed building, the uncompleted buildings, the sold units and unsold units together with the land from the wound up company and the purchasers. Blackstone's offer was subject to the agreement that a SOA should be held and approved by the court. However the respondents (Majority of the respondents above fall into the category of purchasers whose units have not been disclaimed by the secured creditor ('unredeemed purchasers')) objected the application for SOA. The objections premised on the following matters:

- a) that some of the interveners have fully paid or have paid up 90% of the purchase price of their respective units and the fact that some of the respondents have been provided vacant possession of their units with the issuance of the certificate of fitness by the local authorities, the respondents cannot be deemed as creditors of the petitioner and as such cannot be considered as scheme creditors under the SOA; and,
- b) the respondent are also taking issue on the involvement of the secured creditor being classified together as a scheme creditor and allowed to vote during the CCM (Court Convened Meeting).

Nonetheless the court dismissed the objection of the respondents on the ground that the majority of the creditors (including the aggrieved purchasers) would obtain benefits from the SOA as Blackstone was agreeable to purchase the project and the units, thus settling



all the problems of the liquidators and the debts of the scheme creditors, secured creditors and the unsecured creditors.

The application for SOA can be made either by the company or the creditors or the members of the company (section 176(1) CA). The court may grant the application and a period of not more than ninety days (90) or such longer period as the court may for good reason allow for the SOA to be carried out (section 176(11) CA). The court may also grant a restraining order against any proceedings to the creditors or members in order for the SOA be implemented smoothly (section 176(10) CA).

It is opined, the existence of SOA even with the recent proposed recommendations by the CLRC to improve the SOA may not favour the aggrieved purchasers' interests in abandoned housing projects for example to enable rehabilitation be carried out. This is premised on the ground that the creditors or members of the company may not agree to such a proposal or that many complications and problems may occur affecting the rights and interests of the creditors or the members if rehabilitation or the compromise and arrangement be carried out in the SOA (Companies Commission of Malaysia, 2011).

It is trite fact that, most of the rehabilitation of abandoned housing projects were left to the discretion of the rehabilitating parties with the cooperation and assistance of the chargee lender banks, purchasers, local planning authorities, local authorities, technical agencies, the states and federal authorities, the end-financiers, the land offices and MHLG. The stringent laws governing housing development, land, banking, planning and building, were mostly made relaxed and flexible to accommodate the needs and to facilitate the due execution of the rehabilitation scheme. For example in *Hongkong and Shanghai Banking Corporation Ltd v. Kemajuan Bersatu Enterprise Sdn. Bhd* [1992] 1 LNS 26 (High Court), the court allowed the application of the creditor to appoint a provisional liquidator pending the disposal of a winding up petition for the purpose of rehabilitating the abandoned housing project carried out by the respondent company. Similarly in *Bank Bumiputra Malaysia Berhad v Sintisis Sdn Bhd & 2 Ors* [1995] 1 LNS 268 (High Court of Malaya at Kuala Lumpur), the court allowed the receiver and manager to carry out rehabilitation of the abandoned housing project left by the defaulting housing developer company. In this case, the first defendant (Sintisis Sdn. Bhd--a housing developer) was the registered proprietor of the land held under Lot 155, Mukim Grant 1995 and Lot 2758 Grant 26584, Mukim of Tebrau, Johore Bahru. The first defendant developed this land into a housing development project. To finance this project, the first defendant obtained, bridging finance facilities subject to a first legal charge on the said land and guarantees of the second and third defendants. However later, the first defendant was subject to a receivership. The business and affair of the first defendant were controlled by the appointed receiver and manager. This receiver and manager was appointed by the court and was required to undertake rehabilitation of the abandoned project left by the first defendant.

Nevertheless, there are situations where there are no required help and facility to smooth out the rehabilitation scheme, to the detriment of the purchasers desiring the project so abandoned to be revived. For example in *Mohammad bin Bae v. Pembangunan Farlim Sdn. Bhd.* [1988] 3 MLJ 211, the court refused the application of the purchasers to have

the abandoned housing project revived by the newly appointed receiver and manager because of the difficulty to supervise the rehabilitation process. However, the court granted damages to the purchasers. In other situations, the court allowed the application of the creditor bank to order the foreclosure of the project land charged on the default of the borrower developer in the repayment of the bridging loans, to the detriment of the purchasers' right to have the project revived. This problem also occurred in *Wong Fook Too & Anor v Perwira Indra Sakti Sdn Bhd* [Suit No. D-28-51-2006] (High Court of Malaya at Kuala Lumpur), whereby in this case the housing developer company was wound up by the court on the application of the aggrieved purchaser. The aggrieved purchaser applied to the court to compel the developer to complete the abandoned housing project left. The court disallowed the application of the aggrieved purchaser on the ground that this will prejudice the interests of the creditors. Instead, the aggrieved purchaser is only allowed to file proof of debts ('POD') to the liquidator.

Thus, there is no guarantee that when the insolvent housing developer companies abandon the housing projects, the projects can be duly rehabilitated, and thus detrimental to the interests of the purchasers. As a result of the lack of clear provisions in the CA and the insolvency law and that there is no clear policy of the court in dealing with the insolvent housing developer companies whose housing projects are abandoned, the purchasers suffer grievances and losses consequent to the default of the housing developer to complete the housing project.

## **RECOMMENDATIONS AND CONCLUSION**

It is the view of the author that the insolvency approach via SOA administration as applicable in Malaysia tend to be a creditors-centric approach. The result is that if insolvent housing developer companies subject to SOA abandon their housing projects, the aggrieved purchasers may not get any or full protection under the said insolvency approach detrimental to their rights and interests. It is submitted that, a special rehabilitation legal regime and the requirement that the applicant developer to possess housing development insurance, be introduced in the Housing Development (Control and Licensing) 1966 (Act 118) and the corresponding housing legislations in Sabah and Sarawak (East Malaysia), to protect the rights and interests of the aggrieved purchasers in abandoned housing projects, particularly when the insolvent housing developer companies enter SOA administration. The purpose of imposing this insurance is to protect the interests of the purchasers when the housing projects carried out by the insolvent housing developer companies are abandoned. This protection may serve as a 'backup' monetary means to fund the rehabilitation of the abandoned housing projects. The following provisions are proposed to be inserted in Act 118.

### **HOUSING DEVELOPMENT (REHABILITATION OF ABANDONED HOUSING PROJECT) REGULATIONS**

*In the exercise of the powers conferred by section 24 of the HOUSING DEVELOPMENT (CONTROL AND LICENCING) ACT 1966, the Minister makes the following regulations:*

#### ***Citation and Commencement***

*These regulations may be cited as the Housing Development (Rehabilitation of Abandoned Housing Project) Regulations.*

#### ***Interpretation***

***‘Completion of the rehabilitation’*** means when the rehabilitated project has been duly commenced in accordance with the specifications, plans and laws, Certificate of Completion and Compliance has been obtained from the principal submitting person, the rehabilitated unit and the title to the unit are ready for delivery of vacant possession and transfer to purchaser on the required settlement of the purchase price’.

***‘Development period’*** means the period within which a developer shall have to complete the development of the purported housing project, either in 24 or 36 months, as the case may be, in accordance with the terms of the statutory standard sale and purchase agreement(s) entered into with the purchaser(s).

***‘Incapable Developer’*** means the incapable developer which is defined under section 3 of the Act.

***‘Insurance’*** means scheme of housing development insurance approved by the Controller for the purpose of the grant of a housing developer’s licence, pursuant to section 6(1)(h) of the Act, viz to cover all losses and damages for non-compliance, defective and sub-standard works, abandonment and to cover the costs for carrying out any rehabilitation of the purported housing development project due to disappearance, insolvency, death and inability of the developer’

***‘Parties to the rehabilitation’*** means the purchasers, the previous defaulting developer and its directors, the rehabilitating party, the technical agencies, the appropriate authority, the Financiers, the lender bank, the consultants, the contractors and other persons incidentally involved directly or indirectly in the opinion of the Controller’.

***‘Regulation 1989’*** means the HOUSING DEVELOPMENT (CONTROL AND LICENSING) Regulations 1989.

***‘Regulation 1991’*** means the HOUSING DEVELOPMENT (HOUSING DEVELOPMENT ACCOUNT) Regulations 1991.

***‘Rehabilitation Manager’*** means any person deemed fit by the Controller to carry out the rehabilitation of the abandoned housing project.

*‘Statutory Standard Sale and Purchase Agreement’ means the sale and purchase of housing unit agreement either in Schedule G or Schedule H or Schedule I or Schedule J of the Regulations 1989.*

*‘The Act’ means the HOUSING DEVELOPMENT (CONTROL AND LICENSING) ACT 1966 (Act 118).*

**Regulation 1:**

*‘On the expiry of the development period, yet the purported housing project is still not completed, or in respect of the incapable developer, during the development period, in the opinion of the Controller that the developer is not able to duly complete or carry out the development of the project, the Controller may issue a request notice to the said developer to complete the same and notify him that in the event the purported development still cannot be completed within another one year from the date of the notice, or in respect of the incapable developer, on the expiry of the development period, the project shall be deemed an abandoned housing project and forthwith, shall be vested in the hands of the Controller for rehabilitation purpose’.*

**Regulation 2:**

*‘For the purpose of carrying out any rehabilitation of the abandoned housing project, on the expiry of the extended one year period, or in respect of the incapable developer, on the expiry of the development period, as mentioned in Regulation 1 of these Regulations, and after notification for the taking over of the project from the developer and published it in the Gazette, the Housing Controller may appoint any rehabilitating party to undertake the rehabilitation of the said project’.*

**Regulation 3:**

*‘The rehabilitation manager shall first use the purchasers’ available funds still available in the hands of the Financiers or in the Housing Development Account for meeting the costs of rehabilitation.’*

**Regulation 4:**

*‘The withdrawal of the moneys from the Housing Development Account by the rehabilitating party, shall be subject to the provisions in Regulation 1991’.*

**Regulation 5:**

*‘Only if the available funds in the hands of the Financiers and that the moneys in the Housing Development Account are not enough to meet the*

*rehabilitation costs, shall then the rehabilitating party invoke the insurance coverage in respect of the housing development project, to cover the shortfall until completion'*

**Regulations 6:**

*'The insurance moneys shall also be deposited into the Housing Development Account and the withdrawal shall be subject to the provisions in Regulation 1991.'*

**Regulation 7:**

*'The rehabilitation carried out by the rehabilitation manager shall be subject to terms and conditions of the Controller, the Act and its regulations and the statutory standard sale and purchase agreement between the purchasers and the previous defaulting developer executed earlier insofar as the Controller deems expedient and necessary'.*

**Regulation 8:**

*'No person shall take any action whatsoever against the rehabilitation manager and the project under rehabilitation, pending completion thereof'.*

**Regulation 9:**

*'The rehabilitation shall be completed as soon as practicable and the rehabilitation manager shall observe and comply with the provisions in the Act and its regulations unless exempted in writing by the Controller insofar as the Controller deems necessary and expedient in the interest of the public'.*

**Regulation 10:**

*'Parties to the rehabilitation shall render necessary cooperation warranting the completion of the purported rehabilitation'.*

**Regulation 11:**

*'Any person who contravenes any provision under these Regulations shall be guilty of an offence and shall, on conviction, be liable to punishments pursuant to section 21 of the Act'.*

**Regulation 12:**

*“Nothing in this regulation shall prejudice and bar the rights of the purchasers to invoke the provisions in the Act and its regulations against the incapable developer”*

In respect of the definition of ‘Abandoned Housing Project’, the following definition should be adopted in Act 118.

*Addition to section 3, of Act 118:*

*‘Abandoned Housing Project’ means any housing development project where the developer fails to complete it within one year after the request notice to complete has been served by the Controller to the said developer or in respect of the incapable developer, after the expiry of the period within which a developer shall have to complete the construction of the project either in 24 or 36 months, as the case may be, in accordance with regulations made controlling the rehabilitation of abandoned housing projects.’*

*‘Incapable Developer’ means any developer who is in the opinion of the Controller, on whatever reasons, is not able to duly complete or carry out the construction of the purported housing development project during the period within which a developer shall have to complete the construction of the project either in 24 or 36 months, as the case may be.’*

For the purpose of rehabilitating abandoned housing projects, it is proposed, once a housing project falls under the definition of abandoned housing project, the Minister of Housing and Local Government shall order that such a project be rehabilitated pursuant to the regulations of abandoned housing project (Nuarrual Hilal Md. Dahlan, 2006). It is proposed this power be provided in section 11(1)(cb), as follows:

*Additional section 11(1)(cb) of Act 118:*

*‘direct that, once any housing project has become an abandoned housing project, the project so abandoned shall be subject to rehabilitation in accordance with the regulations made under this Act’*

It is also proposed that, one of the conditions for the applicant developer to obtain a housing developer’s licence is to possess a housing development insurance (or home warranty insurance). With this requirement, the purchasers’ interests are protected against any abandonment and its ensuing consequences, losses and other kinds of housing problems. The insurance could also cover any shortfall in the costs for carrying out any rehabilitation and thus ensuring the project could be duly completed and finally could protect the purchasers’ rights. The proposed provision is as follows:

*Additional section 6(1)(i) of Act 118*

**6. Conditions or restrictions for the grant of a licence.**

*(1) Subject to the exercise of power of waiver by the Minister under subsection (2), the licence applied for under section 5 shall not be granted-*

- a) ...; or
- b) ...;
- c) ...;
- d) ...;
- e) ...;
- f) ...;
- g) ...;
- h) ...;
- i) ...; and,
- j) *'If the applicant developer is not in possession of a valid housing development insurance, approved by the Controller, to cover all losses and damages for non-compliance, defective and sub-standard works, abandonment and to cover the costs for carrying out any rehabilitation of the purported housing development project due to disappearance, insolvency, death and inability of the developer'*

In addition, certain amendments need to be made to the provisions relating to SOA and the proposed CLRC's SOA to accommodate and facilitate the duties, powers and functions of the rehabilitation manager under a specialized rehabilitation legal regime under Act 118. The following amendments to the CA relating to the SOA are proposed:

**1) section 176(1) CA:**

*"Subject to any other written laws, where a compromise or arrangement is proposed between a company and its creditor...the Court may on the application in a summary way of the company or of any creditor....order a meeting of the creditors..."*

**2) section 176(3) CA:**

*"Subject to any other written laws, if a majority in number representing three-fourths in value of the creditors...agrees to any compromise or arrangement the compromise or arrangement shall if approved by the order of the Court be binding on all the creditors..."*

**3) section 176(4) CA:**

*"The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks fitand to other written laws"*

The effect of the above proposed provision with the added word 'subject to any other written laws' and 'and to other written laws' will be this: the order of the Court relating to any agreement in the SOA of the abandoned housing developer companies shall not, at any rate, affect the powers of the rehabilitation manager to carry out rehabilitation in accordance with provisions of the proposed regulations governing rehabilitation of

abandoned housing projects under Act 118. This proposed provision will smoothen the rehabilitation administration.

These proposed legal provisions can protect the interests of the purchasers and other stakeholders in abandoned housing projects, whose housing developer companies are subject to SOA administration, for example by allowing rehabilitation to be duly carried out.



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